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Police governance and accountability in Scotland following reform: Revisiting the policy rationale for the creation of the Scottish Police Authority

Abstract

This article critically assesses the policy discourse for police reform in Scotland, specifically focusing on the rationale for the creation of the Scottish Police Authority (SPA). Through a chronological review of official policy reports and consultations that took place prior to the 2012 Act, and by drawing on a select number of interviews¹ conducted as part of the wider study (Malik, 2017a), I argue that while austerity became the catalyst for change, police reform in Scotland was strongly supported by concerns around weak police governance arrangements. The SPA was created to strengthen financial oversight, to provide enhanced focus on national policing requirements and to bring in professional governance competencies and expertise that the local police authorities lacked. In the five years since reform, the SPA has continued to struggle to address these weaknesses. Furthermore, the official reform agenda neglected the need for robust mechanisms for accountability of operational policing. This omission manifested in the most abrasive fashion following the 2012 Act as cases such as stop and search and armed policing highlighted the inadequacies of the new police governance arrangements. In order that the SPA can fulfil its intended purpose, it needs to enhance its capacity and focus on providing holistic mechanisms for police governance that incorporate financial oversight and robust accountability of operational policing.

Keywords

Police Governance, Accountability, Police reform, Scottish Police Authority, Police Scotland

Introduction

The Police and Fire Reform (Scotland) Act 2012 (*henceforth*, the 2012 Act) came into effect on 1 April 2013, bringing about a seismic shift to the policing and police governance landscape of Scotland. Five years on, the effects of the 2012 Act still reverberate today as the Scottish Police Authority (the SPA), under the leadership of its third chair, look to appoint the third chief constable for the Police Service of Scotland (Police Scotland). In this article, I firstly map out the powers and responsibilities of the key actors involved in the post-2012 Act governance arrangements and provide a chronological analysis of the official policy

discourse leading up to the 2012 Act. By drawing on a select number of interviews with stakeholders across the Scottish policing landscape, including a former Minister, I critically assess the policy discourse and distil the nuances of the rationale for the current police governance arrangements and the creation of the SPA. I argue that while austerity provided a strong impetus for police reform, the official policy agenda sought to strengthen police governance in relation to the allocation of resources, local service delivery, and national policing requirements. The policy discourse also highlighted the need for expertise in police governance and it was deemed that the SPA would provide the necessary governance competencies and professional skills that the previous local police authorities lacked. However, the need for robust mechanisms of accountability of operational policing was neglected. I argue that this omission has resulted in inadequate police governance and accountability arrangements, particularly manifesting in the SPA's inability to hold the police to account since the 2012 Act came into effect.

The landscape of police governance

Prior to the new arrangements, police governance in Scotland was managed through a tripartite structure under which responsibilities and powers of governance were shared between central government, local government, through the local police authorities, and chief constables. The 2012 Act replaced the previous tripartite model with a multifaceted approach

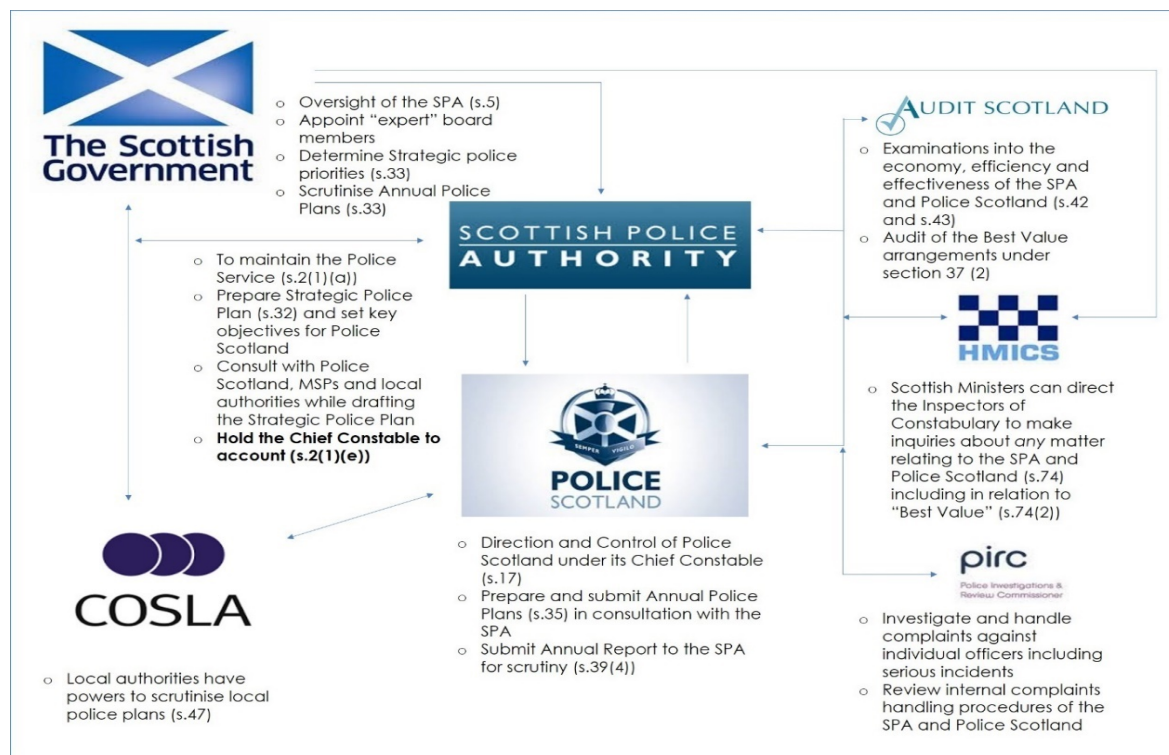


Figure 1 - A snapshot of the distribution of powers following the 2012 Act

to police governance and accountability. While the SPA occupies a central role in the new police governance arrangements, there are other key actors with varying degrees of power and influence in the new governance landscape (see fig. 1 for a snapshot):

The Police Service of Scotland

Police Scotland replaced the eight former regional police forces, the Scottish Crime and Drug Enforcement Agency (SCDEA), and the Association of Chief Police Officers in Scotland (ACPOS). It is led by a corporate executive team of senior police officers of rank assistant chief constable and above, and senior civilian police staff, under the leadership of a single chief constable. There are thirteen local policing divisions across the thirty-two local authority areas, each led by a local divisional commander. Further, there are three Regional Command Areas, led by an assistant chief constable, corresponding to the North, West and East regions of Scotland. In addition, specialist services such as counter terrorism and investigations of major crimes are delivered by the Specialist Crime Division (SCD), and Operational Support Divisions provide support functions such as Roads Policing, Air support, Dog branch, Mounted Branch and Marine Policing. The 2012 Act places the direction and control of all of the police organisation under the domain of the chief constable (s.17(2)(a)), who is also responsible for the day to day administration of the police service (s.17(2)(b)). Crucially, by virtue of s.17, police officers of any rank, including the civilian staff, in exercising their functions are also subject to the direction and control of the chief constable (s.21), and it is the chief constable who is liable for any unlawful conduct by a constable in respect of their functions (s.24(1)). The chief constable has to prepare an annual police plan (s.35) and have regard to any comments received on the draft plan by the SPA (s.35(3)).

The Scottish Police Authority

The SPA replaced the former local police authorities, and it occupies a central role in the new landscape of police governance. The SPA is the legal employer of Police Scotland. It has statutory responsibility to maintain the police service (s.3) and it is the only body with formal statutory powers to hold the chief constable to account (s.2(1)(e)). As it is the SPA's duty to allocate police budgets, it has to pay damages in case of unlawful conduct by constables under the direction of the chief constable (s.24(3)). The SPA also has powers to appoint the chief constable, deputy chief constables and assistant chief constables (s.7(1)). However, the appointment of the chief constable has to be approved by the Scottish Ministers (s.7(2)), and the appointments of other senior officers have to be made following consultation with the

chief constable (s.7(3)). Similarly, the SPA can require a chief constable to resign or retire in the interests of efficiency or effectiveness, but it must do so following consultation with the Scottish Ministers (s.14 (2)(c)). The SPA also has a duty to prepare a strategic police plan, setting out the main objectives for the policing of Scotland (s.34), the chief constable's annual police plan has to give cognisance to the strategic police plan (s.35(2)(b)).

Scottish Government

The Scottish Ministers have formal powers throughout the various sections of the 2012 Act, maintaining a check on the powers of the SPA and the chief constable. Section 5 of the 2012 Act allows the Scottish Ministers to give directions to the SPA, however, the direction may not be about a specific operation carried out by Police Scotland (s.5(2)). The Scottish Ministers also have powers to determine strategic police priorities (s.33(1)), which the SPA has to take into account when developing the strategic police plan. Schedule 1 of the 2012 Act, also lays out the powers of the Scottish Ministers to appoint the chair of the SPA, and to appoint between ten and fourteen members, as well as formal powers to remove members if certain conditions are satisfied.

The Scottish Parliament

The 2012 Act (s.124(1)) requires the Scottish Parliament to make arrangements for keeping under review the operation of the police reform legislation. Following the passing of the 2012 Act, the Justice Committee comprising of a cross-party membership took responsibility of fulfilling the requirements of the Act and conducted several meetings on matters relating to police reform and the new governance arrangements. The Parliament established the Justice Sub-Committee on Policing on 13 March 2013 due to the 'legislative workload' of the Justice Committee (Scottish Parliament, 2014: 1). The Justice Sub-Committee on Policing has played a significant role in delivering public accountability of the police and the SPA, reporting on issues including armed policing, local policing, stop and search and the adequacy (or inadequacy) of the new police governance arrangements. In April 2018, five years since the reforms came into effect, the Justice Committee initiated post-legislative scrutiny of the 2012 Act to examine whether the policy objectives of the 2012 Act have been achieved.

Her Majesty's Inspectorate for Constabulary in Scotland (HMICS)

The role and powers of HMICS were retained and extended in the 2012 Act (s.71). HMICS has formal powers to not only conduct inquiries about any matter relating to Police Scotland,

but also the SPA. The Scottish Ministers also have powers to direct HMICS to carry out an inspection into anything they deem to be relevant (s.74). Since 2012, HMICS has carried out thematic inspections on local policing, armed policing, stop and search, call handling centres and openness and transparency within the SPA. The myriad inspection reports published by HMICS have been drawn on extensively by the Scottish Parliament and they have served as a necessary evidence-base for informed scrutiny of Police Scotland.

Audit Scotland

The 2012 Act (s.37) places a statutory obligation on both Police Scotland, and the SPA to secure 'best value', giving due regard to the principles of efficiency, effectiveness, economy and meeting the requirements of providing equal opportunities (s.37(4)). By virtue of s.37, the Auditor General for Scotland is responsible for auditing the SPA (s.42) and Police Scotland (s.43). The Auditor General is independent of the Scottish Government and reports directly to the Scottish Parliament. Since 2012, Audit Scotland has identified various weaknesses in the new police governance arrangements, and more recently it criticised the SPA for financial mismanagement and improper governance and oversight (Audit Scotland, 2017).

Local Scrutiny Committees

The provision of local policing was made a statutory requirement by the 2012 Act, requiring the chief constable to appoint a local commander for each local authority area (s.44). Whilst the Act did not prescribe how the local scrutiny arrangements would be organised, it did give powers to local authorities to determine local policing priorities in partnership with the local commander, and to approve the local police plan (s.47). Crucially, the powers of police funding, and maintenance of the local police forces, previously enjoyed by the local police authorities were passed to the SPA. Under the new governance arrangements, the role of the local authorities has been to 'monitor' and 'provide feedback' to the local commander on the performance of local policing (s.45(2)). The local commander is required to involve the local authority in setting the local policing priorities (s.45(1)) and to participate in community planning (s.46). Since 2012, all thirty-two local authorities have made arrangements for local scrutiny, in the form of local scrutiny committees (see Henry, Malik and Aitchison, 2016).

The Police Investigations and Review Commissioner (PIRC)

PIRC is the main organisation responsible for handling complaints against individual police officers and it has powers to investigate the most serious incidents involving the police (s.62). PIRC replaced the previous Police Complaints Commissioner for Scotland (PCCS) and it is organisationally independent of Police Scotland and the SPA. PIRC is under the jurisdiction

of the Lord Advocate of the Crown Office and Procurator Fiscal Service, responsible for all prosecutions in Scotland. The 2012 Act (s.65) gives powers to PIRC to initiate investigations in relation to any policing related matter, that may be of public interest. PIRC also has a statutory duty to keep under review the complaints handling processes of both Police Scotland and the SPA.

The roadmap to the 2012 Act

The early modern police forces in Scotland developed locally at the behest of local administrations, with minimal central government legislation (Gordon, 1980; Barrie, 2012; Davidson, Jackson and Smale, 2016). Despite local beginnings, policing scholars have identified a consistent trend towards greater centralisation of policing and police governance (Donnelly and Scott, 2002: 12-13; Scott, 2011). The 2012 Act and the creation of Police Scotland and the SPA represent the culmination of this trend. Whilst the process of amalgamation of the eight legacy police forces into a single service was rapid (Fyfe, 2014) my analysis of the official policy discourse shows that the 2012 Act itself followed a considerably lengthy period of reviews and consultations.

The Scottish Parliamentary elections of 2007 and the formation of the Scottish National Party (SNP) led minority government triggered a sequence of events, consultations, reviews and

- **May, 2007** - Scottish National Party win the Scottish Parliamentary elections and form a minority government
- **January, 2008** - Justice Committee Inquiry report into the effective use of police resources
- **January, 2009** - Independent Review of Policing in Scotland
- **November, 2009** - Scottish Policing Board set up following the Independent Review recommendations
- **October, 2010** - Sustainable Policing sub-group set up in anticipation of the UK Spending Review
- **February, 2011** - Scottish Government Consultation on the future of policing
- **March, 2011** - Sustainable policing sub-group, Phase Two Report: Options for Reform
- **May, 2011** - HMICS publish paper on police governance and accountability
- **June, 2011** - Christie Commission publish recommendations on efficient public service delivery
- **September, 2011** - Scottish Government Consultation on amalgamation of the police forces
- **September, 2011** - Scottish Government publish Police Reform Outline Business Case
- **January, 2012** - The Police and Fire Reform (Scotland) Bill introduced in the Scottish Parliament
- **August, 2012** - The Police and Fire Reform (Scotland) Act received Royal Assent

Box 1 - Timeline of events leading up to the 2012 Act

inspections (see Box 1), that involved a broad range of stakeholders including the Scottish Parliament, the now defunct Association of Chief Police Officers in Scotland (ACPOS), representatives and convenors of local police authorities, HMICS, the Audit Commissioner, civil servants, and academics. Each report, committee and commission through its recommendations sought to address the weaknesses in the governance structures that existed since the last comprehensive review of policing in Britain that was conducted by the Royal Commission on Policing in 1962. The following sections offer a brief timeline of events and recommendations made by the various stakeholders in the lead up to the Police and Fire Reform (Scotland) Act 2012.

The Justice Committee Report (2008)

During the 2007 election campaign, the SNP made a pledge to recruit more police officers (SNP, 2007: 58). Following the formation of a SNP minority government, the newly formed Justice Committee commenced an inquiry with an initial remit to ‘review the use of police resources in Scotland including plans by the Scottish Government to provide for an additional 1000 police officers’ (Justice Committee, 2008: para. 3). The Justice Committee broadened its remit soon after it initiated the review and the final report published in 2008 included recommendations on all aspects of policing and police governance, including the purpose and priorities for policing in Scotland and the effectiveness of the tripartite governance arrangements (Ibid. para. 5). In particular, the Justice Committee recommended that the roles and responsibilities of all actors within the tripartite relationship should be clarified (Ibid. para. 349), the composition of local police authorities should be reviewed to include independently appointed advisors with a range of professional skills and expertise (Ibid. para. 351), the local police authorities should ensure they have sufficient support and analytical capacity to independently scrutinise the performance of the police (Ibid. para. 353), and that local police authorities should make themselves more visible to local communities, promote dialogue with the electorate and effectively communicate local priorities for policing (Ibid. para. 354). As part of the recommendations, the Justice Committee also called for a thorough independent review of Scottish policing in appreciation of the fact that there had not been a comprehensive review of policing and police governance arrangements in Scotland since the Police (Scotland) Act 1967 (Ibid. para. 364).

Independent Review of Policing in Scotland (2009)

The HMICS review took the findings and recommendations of the Justice Committee’s report (2008) as the point of departure and conducted a holistic review into the roles and

responsibilities of police forces in Scotland. The review looked at all aspects of Scottish policing and one of its stated objectives were to 'make recommendations for the organisation, governance and accountability of police forces in Scotland' (Tomkins, 2009: 9).

The HMICS report reemphasised the ambiguities in the existing tripartite structure of governance and found that the local police authorities had very little influence over local policing decisions that were usually made through the community planning partnerships and Single Outcome Agreements² (SOAs) (Ibid. para. 1.17). The local police authorities also lacked independent support to enable them to scrutinise and challenge police operational policies effectively (Ibid. para. 1.18). Further, there was no statutory requirement for the local police authorities to consider national policing requirements such as counter terrorism, cybercrime and organised crime, and chief constables were bound by legislation 'to give primacy to the decisions of local police authority' (Ibid. para. 1.19). The report also highlighted serious gaps in governance over national policing decisions due to a lack of formal mechanisms to hold ACPOs to account as a collective body. As part of its recommendations, HMICS proposed the creation of a national steering group (they referred to as the Policing in Scotland Steering Group or PSSG) to oversee national strategy and collaborate with partners of the existing tripartite arrangement to respond to national policing risks (Tomkins, 2009: 51-53).

In 2007, a Scottish Police Services Authority (SPSA) had already been established to 'improve the efficiency and effectiveness of services which support Scottish policing' (Audit Scotland, 2010: 1). However, the SPSA did not have a governance role over any of the eight local police forces, it provided specialist support services such as forensics, fingerprint and DNA analysis to the police and the Crown Office and Procurator Fiscal Service.

Following the Independent Review by HMICS, the Cabinet Secretary responded by setting up a Scottish Policing Board (SPB) in November 2009, membership of which consisted of the Scottish Government, Chair of the Police Authorities Conveners' Forum, three nominated Conveners of the local police authorities, ACPOS President, Vice President, a third Chief Constable nominated by ACPOS, and local authority representatives (Scottish Government, 2009: para. 9).

Sustainable Policing Sub-group (2010)

In anticipation of the UK Government's Spending Review for years 2011 to 2015, the SPB members, on request of the Cabinet Secretary for Justice, initiated a programme of work in

June 2010 in order to identify a sustainable policing model for Scotland (Scottish Policing Board, 2010a: 1). By October 2010, a Sustainable Policing Sub-group (SPSG) was formed with a remit to 'develop rigorously appraised options for further cost savings to enable frontline policing outcomes to be sustained in 2013-14 and beyond, in the face of anticipated spending reductions' (Scottish Government, 2010: 1).

The SPSG submitted its interim report in November 2010, and among many early considerations it explored three structures of policing; a more streamlined local force model, a regional model and a single service (SPSG, 2010: 22-25). Three tiers of accountability concomitant to the three structures were also proposed. Firstly, at the multi-member ward level, through the community councils as the first tier to hold operational policing to account (Ibid. para. 3.15). Secondly, at the local authority level and embedded within the existing community planning partnership structures and SOAs, particularly through the delivery of jointly agreed outcomes (Ibid. para. 3.16). And nationally through a 'Scottish Police Authority should a single force be created', with existing bodies like the SPB to co-ordinate national priorities and strategic objectives (Ibid. para. 3.17). This was the first mention of a national accountability body that would work alongside the SPB but operate as an independent body.

The interim report was presented at the SPB meeting in December 2010 which was attended by the SPB members, the SPSG project team, representatives from local authorities, ACPOS, HMICS, officials from the Scottish Government, some conveners of the local police authorities and joint boards, members of the Association of Scottish Police Superintendents (ASPS) and the Scottish Police Federation (SPF). Due to a range of options requiring further exploration, the SPB members could not reach a consensus and the Cabinet Secretary for Justice took forward the proposed local, regional and national models to the Cabinet for further consideration (Scottish Policing Board, 2010b: 4).

Scottish Government Consultation on the future of policing (February 2011)

In terms of the roadmap towards a centralised police service, 2011 proved to be the busiest year for all stakeholders involved in the Scottish policing landscape. Following the early work conducted by the SPB and the subsequent SPSG, the Scottish Government embarked on a wide-ranging consultation process asking stakeholders to provide written responses to 12 questions based around 'improving services and delivering improved outcomes; accountability and engagement, especially in relation to local communities; and delivering efficiencies while protecting frontline services' (Scottish Government, 2011a: 5). The

consultation also sought views on the three proposed structures, that is 'significantly enhanced collaboration between the existing eight forces; a rationalised regional model; and a single service' (Ibid.).

Sustainable Policing Sub-group, Phase Two Report: Options for Reform (March 2011)

A month after the Scottish Government issued its consultation document, the SPSG reported to the SPB with its phase two report with further evidence for a viable model of policing going forward. In exploring the three models, the SPSG expressed their support for the single service (SPSG, 2011: para. 15).

As the SPSG's work gained momentum in identifying the most efficient and effective structure for the future delivery of policing in Scotland, the Scottish Government reiterated its desire to improve governance and accountability of policing in Scotland whichever structure was adopted. There was widespread recognition within the policy circles that whilst the local police forces were actively contributing to the community planning partnerships and SOAs, 'there were few formal mechanisms for holding the police to account at the local authority level' (Scottish Government, 2011b: 2, para. 11).

The Scottish Government also asked the SPSG to consider formal structures to strengthen national accountability. In the event of amalgamation, two models were particularly being explored; one where the chief constable would be directly answerable to the relevant Minister, providing direct democratic accountability; or a second where the chief constable would be answerable to a National Policing Board or Authority with powers to allocate funds, appoint chief officers and approve strategic plans (Scottish Government, 2011b: 3, para. 15). Further, whilst appreciating the need for formal local and national structures and mechanisms of accountability, the Scottish Government also showed an interest in strengthening accountability through 'engagement and dialogue, information provision and performance reporting and the use of web and social media' (Scottish Government, 2011b: 4, para. 18).

HMICS' Discussion Paper on Governance and Accountability of Policing in Scotland (May 2011)

The Scottish Government's concerns about a lack of formal mechanisms for local and national accountability were endorsed once again by HMICS. A report published by HMICS in 2011 showed recognised the weaknesses in the tripartite arrangements that the Justice Committee (2008) and the Independent Review (Tomkins, 2009) had previously alluded to. The HMICS review went as far as saying that the 'fundamental problems raised by the Royal

Commission in 1962 had never been addressed and the complex competencies required for governance and accountability of the police had never been made available' (Laing and Fossey, 2011: 14). Among the recommendations, it was proposed that any future structure of policing should 'develop a fuller system of governance incorporating the wider skills, knowledge, competences, capabilities and capacity necessary to draw policing more fully to account' (Ibid. p. 15).

The discourses up to the May 2011 Scottish Parliamentary elections, even while the shadow of austerity loomed, strongly supported police reform and the most important rationale for change at the time was the weak governance and accountability structure and the underlying ambiguities of tripartism that had not been addressed in over four decades. However, it was the economic debate, and the need to develop a sustainable policing model that ultimately became the catalyst for change.

Christie Commission (June 2011)

The debates and consultations around the future delivery of policing in Scotland were being conducted at a time when, in light of the UK Government's spending review, the Scottish Government had commissioned a much broader consultation on the future delivery of public services. It was in this context that the Scottish Parliamentary elections were contested in 2011. Despite the impending public services review being undertaken by the Christie Commission, the SNP pledged to maintain the 1000 extra police officers that they had initially promised in 2007 whilst also suggesting a reduction in the number of forces (SNP, 2011: 18), stopping short of pledging full support for a single service. The Scottish Labour (Scottish Labour, 2011: 47-48) and the Scottish Conservatives (Scottish Conservatives, 2011: 20) outright supported a single service, while the Scottish Liberal Democrats (Scottish Liberal Democrats, 2011: 72) and the Scottish Greens opposed it (Scottish Greens, 2011: 22).

The responsibility of reforming the police in Scotland fell on the SNP following a majority win and despite their initial reluctance, the momentum towards a single police service hastened following the publication of Christie's report. Christie made recommendations of greater integration between not just the police forces but in terms of wider public service delivery provision (Christie, 2011: 43), a reduction in duplication and sharing of resources for greater efficiency (Ibid. p. 48) and greater accountability and transparency of public services (Ibid. p. 63).

While the focus of the report was on all public services, the findings further strengthened the case for police reform. Christie emphasised that any reform needs to ensure that ‘services are required to account to the people and communities of Scotland, both directly and through their democratically elected representatives’ (Christie, 2011: 76, para. 8.24). However, as HMICS (Laing and Fossey, 2011) and the Justice Committee (2008) had previously observed, the weaknesses in tripartism particularly at the local authority level were not due to a lack of democratic control but due to a lack of professional governance competencies, and capacity.

Police Reform Programme Outline Business Case (September 2011)

The results of the first consultation conducted by the Scottish Government in February 2011 showed very limited support for a single service. Only 22 respondents out of a possible 225 supported a single service, 45 favoured a rationalised regional model, 59 preferred the eight local force model and 77 chose no option due to insufficient evidence and information (Bryan, Granville, and Sizer 2011: 26). Contrary to the official policy discourse, 50 per cent of the respondents noted that the existing governance and accountability arrangements were working well (Ibid. p. 15). The respondents who did not favour a single force model expressed concerns that centralisation would result in a ‘loss of local knowledge in terms of needs, geography, training and skills and a consequent negative impact on services; and a loss of local accountability and democracy’ (Ibid. p. 42).

Despite such unfavourable results, the Scottish Government formally announced its intention to create a single police service in September 2011 and initiated another round of consultations to inform the legislative framework for the reform bill. The announcement came after the SPB had responded to the concerns raised in the first consultation with proposals that local policing will be made a statutory requirement and local accountability will be strengthened by giving powers to local authorities to ‘approve the local police plan, scrutinise local policing performance and to hold the local senior officer to account for local policing’ (SPB, 2011: 2, para. 8-9). The proposals in the second round of consultation included the creation of a centralised governing body of independently appointed members; the Scottish Police Authority (SPA). The SPA was envisaged to provide governance and accountability of the new single service without interference from Scottish Ministers and it was reiterated that the chief constable would be directly answerable to the SPA (Scottish Government 2011c: 13, para. 3.9). The proposals also recognised that the composition of the SPA would have to be broad and reflect a range of competencies and skills.

The proposals also included measures to strengthen local policing and local accountability by allowing each of the thirty-two local authorities to monitor and scrutinise police performance against the local police plan and to seek reports, answers and explanations from the local commander about the plan or any other local policing issues (Scottish Government 2011c: 15, para 3.20). Crucially, the Scottish Government did not intend to legislate a single way for local authorities to formalise their proposed local scrutiny functions, it was left to the local councillors to determine the most appropriate mechanism and to form a relationship with their local commanders to secure delivery of local outcomes (Ibid. p. 16, para 3.21).

Along with the consultation document, the Scottish Government also issued an outline business case for a single service proposing that ‘it provides the least complex and most efficient option; the best opportunity to reinvest to improve local policing outcomes; the highest potential for long-term financial sustainability; and the best opportunity to co-ordinate change, optimise benefit and minimise risk’ (Scottish Government, 2011d: 9).

The above chronological review highlights the protracted period of discussions that preceded the 2012 Act. The review of the official policy discourse also helps develop a nuanced understanding of the rationale for police reform and the current police governance arrangements, in particular, the creation of the SPA. I distil and examine the key themes in relation to the latter below.

Police reform in context

Austerity

In the ‘age of austerity’ (Neyroud, 2012: 315), the primary driver for the Scottish police reform was the concern around public service spending following the UK Government Spending Review, and an overall reduction in Scotland’s devolved budget (HM Treasury, 2010: 70). As of 2011-12, according to the Scottish Government, policing in Scotland cost the economy a total of £1.4 billion per annum (Scottish Government, 2011c: 18, para. 4.1). With all estimates suggesting that the public service spending was not expected to return to 2010 levels for 16 years (Christie, 2011: viii), inaction was not an option.

HMICS’ Independent Review raised concerns very early on, that local police forces, particularly the smaller ones, were facing financial pressures (Tomkins, 2009: 4, para. 1.7). It

was anticipated that while the larger forces such as Strathclyde would have been able to deliver savings through a reduction in corporate and civilian staff, smaller forces may be forced to reduce front line provision, a measure that was perceived to have drastic effects on communities in areas served by those smaller forces (Scottish Government, 2011a: 11, para. 23). While some local police forces were struggling to provide resources for front line community policing, due to the changing demands on policing and new threats such as terrorism, others like Grampian and Lothian and Borders raised specific concerns about having insufficient resources to police the oil industry and the Capital respectively (Justice Committee, 2008: paras. 56, 57).

In order to provide the necessary savings, it was considered prudent to integrate specialist services and resources and to avoid duplication as proposed by Christie (2011). Of all the options presented, a single force was decided to have been the most efficient with an estimated savings of £151m per annum (Scottish Government, 2011d: 54, para. 5.32). Despite a long period of consultations, the pace of the reform, once the option to move towards a single force was chosen, was remarkable. A civil servant involved in the reform programme told me that work was already in progress on managing the pressures of financial cuts on the local police forces, however, when the extent of the cuts became clear, there was a sense that a structural change was necessary:

Wow, suddenly there is going to be a significant reduction in budget. That started to focus their minds...the whole thing was very quick, in a sense that, we knew that we had to keep the momentum up of this work and there was a pressing need to take it forward. (Interview: civil servant).

An early suggestion of a single force was rejected, however, it was felt very early in the discussions that centralisation would be the most cost-effective option:

well there was a strong sort of evidence base for that [single service] ... at the very first meeting of the SPB, the chair of Strathclyde Police Authority made a point of raising the issue of a single force... so it was not that there weren't people talking about it even back then. (Interview: civil servant).

In the period leading up to the 2012 Act, the reform team also took cognisance of police reform programmes in other jurisdictions. A former Minister who was initially reluctant about the single force told me that:

We looked long and hard at this, because the first option was: do you go to regional services ... and I always remember what persuaded me not to go down regional services was speaking to those in Finland who had been through reform. In Finland, they said we reformed from 30 or 40 [police forces] and we brought it down to 9 or 10 and they said we now have to move on [to a single service]. And they said if you are going to reform then do it once and I took that on board, I thought there was a logic there, if we had gone to 3 or 4 East, West, North as was kind of proposed, you would not have made any significant savings or the savings would have been significantly less. And the lesson that we learned from Finland, and I think that was the evidence, that we would have to move on to a single service pretty quickly. If you were going to [reform the police], you do it once so that was the driver there. (Interview: former Minister).

The Finnish example by the former Minister in the above quote underlines the fact that the police reform in Scotland was not taking place in a vacuum, rather several jurisdictions across Europe were undergoing, or had already undergone, various police reform programmes. In Finland, the first set of reforms had taken place in 1996 and coincided with the changes in the local government structures. As a result, the concomitant police forces were reduced from 229 police districts to ninety local police departments (Haraholma and Houtsonen, 2013: 59). Subsequent reforms took place in two phases, in 2009 and 2010, resulting in a unified police service with one of the stated aims as “to gain productivity savings” (Haraholma and Houtsonen, 2013: 60).

Similarly, in the Netherlands, a national police service replacing the previous twenty-five semi-autonomous regional police forces came into effect in January 2013 (Terpstra, 2013: 139). Whilst austerity did not feature strongly in the police reform agenda in the Netherlands, there were overall concerns regarding resource and information sharing between the regional forces, and the need for a more harmonised administrative structure following a failure of a major IT project (Terpstra, 2013: 143-144; Terpstra and Fyfe, 2015: 530).

In 2012, Sweden also embarked on police reform from 21 county police forces to a single national police service, and the police authorities, responsible for maintaining the county forces were replaced by a centralised police authority, with cost-effectiveness as a key stated rationale for the reform (Wennström, 2013: 159).

In a stark contrast to the tide of centralisation in Europe, the reform programme in the jurisdiction closest to Scotland, also driven by austerity, followed a ‘divergent trend’ (Fyfe and Henry, 2012). In England and Wales, the Police Reform and Social Responsibility Act in 2011 devolved more powers to local representatives through the newly established role of the Police and Crime Commissioner (PCC) and the Police and Crime Panels.

While austerity proved to be the catalyst for police reform in Scotland, the review of the official policy discourse above emphasises the reform programme’s focus on strengthening police governance, as discussed below.

Enhanced Police Governance

Since the Justice Committee hearing in 2008, it was recognised in the official policy circles that the governance of the local police forces in Scotland was an issue that needed to be addressed, perhaps more so than the reduction in budgets. A senior police officer, also involved in the reform agenda had no doubt that the weak governance structures during tripartism provided the strongest stimulus for change:

The point I would probably just make which is relevant to the question is that one of the drivers for change in the first place was a general view or belief that the governance arrangements for policing were inadequate. They were weak, and they were kind of toothless, and they didn’t provide the kind of clarity or assurance for you know government or for the public. (Interview: senior officer, Police Scotland)

A combination of a lack of financial oversight over local police resources, a lack of interest by the local police authorities in national policing requirements, and a lack of expertise, skills and capacities of the local police authorities were perceived to be crucial weaknesses of the tripartite governance arrangements as far as the official reform agenda was concerned. These three points are considered in greater detail below.

Financial Accountability

The Local Government in Scotland Act 2003 introduced statutory duties on local authorities to secure ‘best value’ in delivering public services by giving due regard to efficiency,

effectiveness, economy and equality (s.1(4)), and to initiate, maintain and facilitate Community Planning in consultation with all public bodies responsible for providing services locally (s.15). The provisions applied to all functions of local authorities and it was here in securing best value and delivering on joint outcomes that the weaknesses of the local police authorities were magnified.

Previous HMICS reviews and the Scottish Government had highlighted that local police authorities were not effective in providing accountability for the way police resources were spent locally in relation to the SOAs and community planning partnerships (Tomkins, 2009: 39-40; Scottish Government, 2011a: 13, para. 28). Following a joint audit and inspection of all eight local police authorities, Audit Scotland and HMICS reported that whilst the local police forces were playing an active role in local community planning and delivering local outcomes, local police authorities were 'not effective in their role of influencing local policing and partnership priorities and then monitoring development and delivery' (Audit Scotland and HMICS, 2012: 6, para. 15). Further, there was a lack of financial oversight particularly in terms of directing police resources towards local priorities (Ibid. p. 6, para. 16). These findings were merely a confirmation of what previous inspections and reports had already alluded to. In giving evidence to the Justice Committee in 2008, HMICS had argued that 'there was too little direct input or challenge from elected members' in relation to priority setting of the local forces (Justice Committee, 2008: para. 324).

Despite having formal powers of governance, local police authorities were often perceived as rubber stamping key decisions (Scott and Wilkie, 2001: 58) and were generally subservient to their chief constables. The point was emphasised by a former Minister in relation to the powers of local police authorities to allocate funds locally:

The money was basically coming from the centre anyway, it's not like they previously decided how they spent it. They [local authorities] might think that but actually it's a false argument because it wasn't their money, it was coming from central grants and anyway other than the chief saying this is what I would like to spend it on I've never heard of a councillor saying you're not spending on that. (Interview: former Minister)

The above statement by the former Minister merits a deeper examination of the state of police funding prior to reform. Under the tripartite governance arrangement, the allocation of funding to the local police forces was split between central government and local authorities

at a ratio of fifty-one per cent central funding and forty-nine per cent local government funding. According to a Scottish Parliament briefing (SPICe, 2011), direct central government funding was used to fund the SPSA, and to provide additional support to local police forces, as well as, for pensions. Central government also made additional contributions to the local authorities through ring-fenced police grants making a total contribution of £691.9 million in 2011/2012, whilst the local authorities contributed £462 million (Ibid. p. 11-12). However, around 85 per cent of the local authority expenditure is funded through a Revenue Support Grant³ issued by the Scottish Government, with the remainder raised through council tax. This additional central government funding is part of the Concordat agreement between the Scottish Government and local authorities on joint delivery of services towards key local and national outcomes (Scottish Government and CoSLA, 2007). Against the backdrop of the Concordat, the lack of oversight over the way police funding was contributing towards local and central priorities provided a strong rationale for simplifying financial oversight of the police through a centralised governance body.

While the SPA was created to strengthen financial oversight over policing resources, it has been severely criticised for 'poor' governance and financial mismanagement in the most recent audit of its accounts by Audit Scotland (2017).

National Policing Requirements

The strongest call for a national strategic body came in 2009 following the HMICS' Independent Review that recommended that 'Scottish Ministers should bring forward draft legislation to impose a statutory duty on chief constables and police authorities to take Scotland's national policing capacity and capability; its national resilience to catastrophic events or strategic threats from criminality; and the reduction of the costs that arise from unnecessary duplication of services into account in all decision-making' (Tomkins, 2009: 52, para. 8.3). A civil servant noted that it was the HMICS review that had paved the way for the creation of the SPB and the SPSA, and even those developments were initially criticised for bringing in centralisation:

So the SPB was an attempt to say look we need something where people come together at a national level... so there was a definite sense of getting to a point where we had the SPB as something that whilst not being a governance structure in the formal sense of the word, did provide an opportunity to bring everyone together to work at a strategic level... there was quite a lot of opposition to that, it was seen by some as being some kind of centralisation. (Interview: civil servant)

National risks and policing priorities were perceived to include, but not limited to, 'counter-terrorism, specialist firearms support, motorway policing and air support, child protection and monitoring sex offenders, serious fraud, armed criminals, kidnap and extortion, the infiltration of police organisations by organised crime, cost of technical aids to investigation, for example in forensic science, forensic accounting and surveillance techniques, new techniques in dealing with large-scale disorder, and additional support to other services dealing with threats such as pandemic disease, food contamination and the effects of severe weather' (Tomkins, 2009: 12, para. 2.19; also see Scottish Government, 2011a: 11, para. 24). The official policy discourse emphasised that local police authorities were under no obligation to consider these requirements when considering priorities for their local police forces.

The move towards a centralised police service and the creation of the SPA sought to strengthen the focus on national policing requirements. Research into the current local governance structures suggest that the balance has shifted too far towards the centre with the 2012 Act creating a 'structural disconnect' between centrally shaped policing policies having a negative impact on local authorities (Henry et al., 2016: 9-13). To date the SPA has not been able to establish an adequate balance between the local and the national (Malik, 2017a).

Expertise, Skills, and Capacities

One of the reasons why the local police authorities were reported to be ineffective in delivering financial accountability of the local police forces was due to a lack of professional expertise at the disposal of the local councillors. Most local police authorities were perceived to have 'limited dedicated professional support to carry out their functions effectively' (Justice Committee, 2008: para. 352). It was recommended by the Justice Committee that the appointment of independent members in an advisory capacity 'could contribute particular professional skills and expertise, professional support and analytical capacity' (Ibid. para. 351-353), enabling the local police authorities to scrutinise the performance of their police forces effectively.

Concerns regarding the lack of expertise and capacity were particularly raised in respect of the reliance of local police authority members on the local police forces to provide information that was crucial for the analysis of police performance (Justice Committee, 2008: para. 352). Audit Scotland and HMICS, in 2009, also remarked that the local police authority members

needed more support to improve their knowledge and understanding of their role as board members in order to fulfil their core activities, including setting direction and priorities and scrutinising police performance' (Audit Scotland, 2009: 3, para. 5). An inspection of the Strathclyde Police Authority, that maintained the largest police force in the country also found that members had 'limited training, varying levels of understanding of their roles and responsibilities and a generally passive, rather than influencing, approach to information from the force' (Laing and Fossey, 2011: 6).

In light of the criticisms of the local police authorities, the SPA was envisioned by its architects to bring greater expertise and professional governance skills. However, five years since the reform, the SPA continues to lack the expertise and capacity to objectively assess and scrutinise the information provided by the police (Malik, 2017b).

The 2012 Act and police accountability: Missed Opportunities

Whilst the official reform agenda remained focused on strengthening overall police governance, there was a distinct lack of focus on accountability of operational policing. There was a sense within the official policy discourse that policing, and the accountability of operational policies were not a cause for concern. This was reiterated by a civil servant involved in the reform programme:

There had not been any issues that had come to light before then, under the prior structure, about operational policing, not that I can recall as we speak. So, in a sense operational policing, policing delivery, was working very well and these reforms, were not about fixing a problem in operational policing, except for, and again very explicit about that...that there needed to be better co-ordination of delivery of national policing. (Interview: civil servant)

A similar point was made by a senior police officer:

When we went into reform policing was not broken, policing was firing on all cylinders we were delivering everything that the communities asked of us, we had made significant cost savings before Police Scotland even came into being ... Performance was very strong across the board, public confidence using all the recognised measures was very very strong and in contrast a lot stronger than England. (Interview: senior officer, Police Scotland)

While traditionally the police forces in Scotland have avoided the heated scandals that their counterparts in England have been embroiled in, several controversies related to operational policies did exist prior to reform (such as the Paisley College Incident, Gordon, 1980: 80; or the criticisms involving the murder inquiry of Surjit Singh Chokar, see Fyfe and Henry, 2012: 175). However, despite these controversies, it has been argued that the Scottish police governance discourse has traditionally lacked “any semblance of accountability” (Lennon and Murray, 2016: 11). The lead up to the 2012 Act presented an opportunity for the reform team to not only strengthen financial oversight of policing, but also to ensure that the new governance arrangements incorporate robust mechanisms for accountability of operational policing.

The lack of focus on accountability of operational policing manifested in the most abrasive fashion following reform. For instance, Police Scotland’s use of stop and search powers were found to be disproportionately targeting young people. Whilst the bulk of the data looked at the stop and search rates before the single service, Murray’s research showed that the use of non-statutory stop and search had increased markedly under the newly centralised Police Scotland (Murray, 2014a). Further, as soon as the new arrangements came into effect, the former Chief Constable issued a Standing Firearms Authority, allowing armed police officers, attached to the Armed Response Vehicles, to be deployed on routine patrols across Scotland. The deployment of armed officers caused considerable controversy, particularly in areas with traditionally low levels of crime. This ‘operational policy’ came into effect without prior consultation or engagement with the SPA, or indeed the local scrutiny committees. Other operational decisions such as the removal of traffic warden support, closures of front counter provisions and the raids on Edinburgh’s previously tolerated sex-for-sale saunas, all in the first year of the new arrangements, without prior consultations with the SPA, not only raised question marks about the effectiveness of the SPA (Scott, 2014; Murray, 2015b; Terpstra and Fyfe, 2015) but also highlighted that the new police governance and accountability arrangements were inadequate. Whilst the changes in personnel may be beneficial in the short term, the weaknesses in the current governance arrangements have been underpinned by the SPA’s continued inability to put in place stringent mechanisms for the accountability of operational policing (Malik, 2017b). These weaknesses need to be addressed by realigning the role and purpose of the SPA in relation to the rationale for its creation.

Conclusion

This paper, through a chronological review of the official policy agenda developed a nuanced understanding of the rationale behind the current structures of police governance and accountability, particularly the creation of the SPA. The reforms took place against a backdrop of austerity and were driven by the official view that the financial accountability of the local police forces was inadequate and that national policing requirements needed greater attention. However, the official policy agenda did not seek to strengthen accountability of operational policing. Following a lengthy period of consultations, it was decided that a structural change was necessary, ensuing a remarkably quick transition to a single police service. While the SPA was created to strengthen police governance by bringing in greater expertise, five years since reform, the current governance structures, underpinned by the SPA's inability to hold policing to account, remain inadequate. While the SPA continues to undergo structural and personnel changes, there is a clear need to revisit the purpose and rationale for its creation. In addition to refocusing its attention on financial accountability and national governance, the SPA needs to equip itself with greater expertise and capacity to provide robust mechanisms for accountability of operational policing.

Notes

¹ As part of the doctoral study, semi-structured interviews were conducted with a range of stakeholders including a former Minister, senior police officers, board members of the SPA, representative from HMICS and a civil servant. Interviews were conducted between 2013 and 2016. Unless otherwise stated, all interviewees were in post at the time of the fieldwork.

² In 2007, the Scottish Government and Scottish local authorities (through COSLA) agreed a Concordat underpinning a closer working relationship between central and local government. A single outcome agreement (SOA) sets out priorities for local outcomes which are agreed between local public services and local authorities for each local authority area and the Scottish Government (Christie, 2011: 43-44).

³ A 'block grant' funding scheme consists of a Revenue Support Grant, Non-Domestic Rates Income and Specific Grants and it is part of a joint service delivery agreement between the Scottish Government and local authorities established under a joint Concordat agreement in 2007 (Scottish Government and CoSLA, 2007).

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